

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2005 AUG 30 PM 2:05

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

FILED
EPA REGION VII
HEARING CLERK

DOCKET NO.: TSCA-08-2004-0005

IN THE MATTER OF:

CARBON POWER AND LIGHT


110 East Spring Street
Saratoga, WY 82331

RESPONDENT

FINAL ORDER

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

August 30, 2005
DATE


Alfred C. Smith
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. TSCA-08-2004-0005

2005 AUG 30 PM 2: 05

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

Carbon Power and Light)
110 East Spring Street)
Saratoga, Wyoming 82331)

Respondent.)

CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency, Region 8, and Respondent, Carbon Power and Light, by their undersigned representatives, hereby consent and agree as follows:

1. On September 28, 2004, Complainant issued a Complaint alleging certain violations of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. section 2615(a), et seq. The Complaint proposed a civil penalty for the violations alleged therein.
2. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations.
3. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint.
4. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondent and Respondent's heirs, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.
5. Respondent consents and agrees to pay a civil penalty in the amount of FOUR THOUSAND dollars (\$4,000.00) in the manner described below in this paragraph:
 - a. Payment is due within 60 calendar days from the date written on the Final Consent Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. The date the payment is made is considered to be the date of receipt

of the payment at the Mellon Bank described below. Payments must be received by 11:00 a.m. EST to be considered as received that day.

b. The payment shall be made by remitting a cashier's or certified check including the name of the docket number of this case, for this amount, payable to "Treasurer, United States of America," via Regular Mail at:

U. S. Environmental Protection Agency, Region 8
Mellon Bank
P.O. Box 360859
Pittsburgh, PA. 15251-6859

Federal Express, Airborne, or other commercial carrier at:

U.S. EPA, 360859
Mellon Client Service Center Rm 670
500 Ross Street
Pittsburgh, PA 15262-0001

Wire Transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA= 021030004
TREAS NYC/CTR/
BNF= /AC-68011008

A copy of the check shall be sent simultaneously to:

Ms. Kim Le
Technical Enforcement Program (8ENF-AT)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, Colorado 80202-2466

and

Ms. Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

c. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate established by the

Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e. on the 1st late day, 61 days of interest accrues.)

d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 61st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e. the 151st day from the date the final consent order is signed). Payments are first applied to accrued interest, penalty and/or handling charge; the balance is then applied to the outstanding principal amount.

e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

Additional Conditions of Settlement

Supplemental Environmental Project ("SEP")

6. In addition to the payment described in Paragraph 5 above, Respondent explicitly agrees to perform a Supplemental Environment Project, described in the succeeding paragraphs.

7. Respondent shall undertake a SEP which is intended for the purpose of securing significant environmental protection and to promote pollution prevention at Respondent's facilities in or near Saratoga, Wyoming. Namely, Respondent proposes to field test all of its transformers over a multi-year time period. Specifically, Respondent will test between 250 and 500 transformers per year. Respondent estimates the cost of these tests to be \$9.00 per sample, plus labor costs. Respondent proposes to change out any transformers found to contain PCBs at a concentration greater than 50 ppm. The schedule for conducting the sampling regime is expected to slow during the construction season and resume during the autumn and winter months. Finally, Respondent states and avers that it has tested 280 transformers as of this date.

8. Respondent shall expend at EIGHT THOUSAND FIVE HUNDRED Dollars (\$8,500.00) on the SEP. Respondent shall provide Complainant with documentation of the expenditures made in connection with the SEP as specified in Paragraph 12 below.

9. Respondent hereby certifies that it is not under any legal obligation, other than this Agreement, to perform or develop the SEP described above nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements.

10. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

11. The determination as to whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

12. Respondent shall submit a SEP Completion Report to EPA within 30 days of the completion of the SEP project and in any event no later than August 1, 2008, unless the deadline is extended by the mutual agreement of the parties. The SEP Completion Report shall contain, at a minimum, the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Agreement; and,
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

Respondent agrees that failure to submit the SEP Completion Report is a violation of this Agreement resulting in Respondent being liable for stipulated penalties pursuant to Paragraph 15 below.

13. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all reports submitted to EPA pursuant to this Agreement. Respondent shall provide the documentation of any such underlying research and data to EPA within fifteen (15) days of a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report submitted to EPA pursuant to this Agreement, Respondent shall, by an officer of Respondent's, certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

14. Following receipt of the SEP Completion Report described in Paragraph 16 above, EPA will either:

- (i) Accept the SEP Completion Report;
- (ii) Reject the SEP Completion Report, notify the Respondent, in writing, of deficiencies in the SEP Completion Report and grant Respondent an additional thirty (30) days to correct any deficiencies; or
- (iii) following the processes set out in subparagraph (ii) immediately above, if EPA must still reject the SEP Completion Report, EPA will so reject the SEP Completion Report in writing, and seek stipulated penalties in accordance with Paragraph 18 below.

If EPA elects to exercise option (ii) above, EPA will permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of Respondent's notification of objection to reach agreement. If agreement between the Parties cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of EPA's decision to Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of such deficiency or failure to comply with the terms of this Agreement. In the event the SEP is not completed as described herein, as determined by EPA and within the time period established with EPA's written statement, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 19 below.

15. In the event that Respondent fails to materially comply with any of the terms or provisions of this Agreement relating to the performance of the SEP or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 10 above, Respondent shall be liable for stipulated penalties as provided below.

- i. Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to Paragraph 18, Respondent shall pay a stipulated penalty to the United States in the amount of FOUR THOUSAND Dollars (\$4,000).
- ii. If the SEP is not completed satisfactorily, but Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalties.

- iii. If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent on the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of FIVE HUNDRED Dollars (\$500.00).
- iv. If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalties.
- v. For failure to submit a SEP Completion Report as required by Paragraph 16 above, Respondent shall pay a stipulated penalty in the amount of FIFTY Dollars (\$50.00) for each day after the due date that the report is submitted.

Stipulated penalties for subparagraph (v) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of Paragraph 5 above. Interest and late charges shall be paid as stated in Paragraph 21 below. Nothing in this Agreement shall be construed as prohibiting, altering or in any way limiting EPA's ability to seek any other remedies or sanctions available to EPA by virtue of Respondent's violation of this Agreement or of the statutes and regulations upon which this Agreement is based, or for Respondent's violation of any applicable provision of law.

16. Any written public statement made by Respondent regarding the SEP required by this Agreement shall include the following language:

**This project was undertaken in connection with
the settlement of an enforcement action taken
by the United States Environmental Protection
Agency for violations of the Toxic Substances
Control Act.**

DELAYS

17. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Respondent shall notify Complainant in writing within ten (10) days of the delay or date on which Respondent obtains knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented.

Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of Respondent's obligation under this Agreement based on such incident.

18. If the Parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the Parties shall stipulate to such extension of time.

19. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Agreement has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of EPA's decision and any delays in the completion of the SEP shall not be excused.

20. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

21. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with TSCA and its implementing regulations.

22. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

23. Nothing in this Consent Agreement shall be construed as a waiver by the U.S. EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Agreement.

24. The undersigned representative of Respondent certifies that he/she is fully authorized to enter into the terms and conditions for this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.

25. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

26. Each party shall bear its own costs and attorneys fees in connection with this matter.

27. This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint. Upon full satisfaction by Respondent, Complainant hereby releases, covenants not to sue, and agrees not to seek further civil or administrative penalties for the specific violations alleged in the complaint. Nothing in this a Consent Agreement shall be construed as a release or a covenant not to sue for any claim or cause of action of any criminal liability.

In the Matter of Carbon Power & Light, EPA Docket No. TSCA-08-2004-0005UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.Date: 8/30/05By: Michael T. Ryan for
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement ProgramDate: 8/30/05By: Martin Hestmark
Martin Hestmark, Director
Technical Enforcement ProgramDate: 8/30/05By: Sheldon H. Stotsky for
Dana J. Stotsky
Senior Enforcement Attorney
Legal Enforcement ProgramCARBON POWER AND LIGHT
Respondent.Date: 8/26/05By: Robert John JohnsonDate: 8/26/05By: Charles H. Hannon

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **CARBON POWER AND LIGHT**, **DOCKET NO.: TSCA-08-2004-0005** was filed with the Regional Hearing Clerk on August 30, 2005.

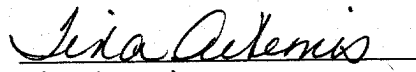
Further, the undersigned certifies that a true and correct copy of the document was delivered to Dana J. Stotsky, Enforcement Attorney, U. S. EPA – Region 8, 999 18th Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on August 30, 2005, to:

Henry F. Bailey, Jr., Esq.
Carbon Power and Light
221 East 21st Street
P. O. Box 1557
Cheyenne, WY 82003

And pouch mailed to:

Honorable William Moran
U. S. Environmental Protection Agency
Office of Administrative Law Judges
Ariel Rios Building (1900L)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

August 30, 2005


Tina Artemis
Regional Hearing Clerk



Printed on Recycled Paper